THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 690 of 2001
(Old FAFO No. 771 of 1987)

Sri Mangat Rai Singhal, Son of Sri Shankar Lal Singhal,
R/O Mohalla Babugarh, Post Vikas Nagar, District Dehradun.

… Appellant.

Vs.

1. Smt. Saeeda Khatun widow of late Sri Shabbir,
2. Km. Sabeeena (minor) D/O late Sri Shabbir,
3. Km. Rukhsana (minor) D/O late Sri Shabbir,
4. Km. Shabnam (minor) D/O late Sri Shabbir,
5. Km. Vaseena (minor) D/O late Sri Shabbir,
6. Sri Talim (minor) son of late Sri Shabbir,
7. Sri Alim (minor) son of late Sri Shabbir,
   All minors through their natural guardian next friend and mother Smt. Saeeda Khatun, all residents of Village Haripur Viyas, P.O. Kalsi, District Dehradun. (Claimants)
8. Sri Ram Swarup S/O Sri Atma Ram, R/O village Dhakrani, P.O. Vikas Nagar, Dehradun.
8. National Insurance Company Dehradun.

…Respondents.

Sri Ramji Srivastava, learned counsel for appellant.
Sri Rajendra Dobhal, Adv., learned counsel for the respondent-claimants No. 1 to 7.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date July 07, 2006

This appeal by the owner of the offending vehicle under Section 110-D of the Motor Vehicles Act 1939 (***in short Old Act***) is directed against the judgment and award dated 29-7-1987 passed by the then Motor Accident Claims Tribunal/I Additional District Judge Dehradun (***for short the Tribunal***) in Motor Accident Claim Case No. 68 of 1984 Smt. Saeeda Khatun and others Vs. Ram Swarup and others, whereby the claim petition of the claimant-respondents was decreed for compensation of Rs. 1,50,000/- along with interest @ 12% per annum from the date of filing of claim petition i.e 8.5.1984 till the date of payment. It was also ordered that a sum of Rs. 1,50,000/- shall be payable by the Insurance Company and rest by the driver and owner of the truck, as mentioned in the impugned award.

Relevant facts necessary for a just decision of the appeal are that the claimant Smt. Saeeda Khatun for herself and on behalf of her minor children filed a claim petition under Section110-A of the Act for total compensation of Rs. 5,50,000/- including economic loss, mental agony and loss of love and affection. Interim compensation of Rs. 15,000/- on the principle of no fault liability was also claimed with the allegation that her husband Sri Shabbir aged 30 years and a Government Contractor earning about Rs. 3,000/- per month lost his life in a vehicular accident, which occurred on 18-11-1983 involving Truck No. URM-3609. It was stated that the said truck was engaged by the deceased for carrying stones, sand, etc. from Kalsi to Dam site. The deceased and some labourers, who were occupants in the truck, also sustained injuries due to the accident as a result of rash and negligent driving by its driver. It was alleged that due to high speed, the driver while negotiating a turn could not control the truck, which fell in a Khud. Mangat Rai is the owner and National Insurance Company is the insurer of the truck.

The driver and owner lof the truck filed their separate written statements and contested the case asserting that deceased was a petty contractor with meagre income of Rs. 600/- per month. The engagement of the truck by the deceased was denied. Negligence on the part of the driver of the truck was denied. A specific plea was taken that the truck was required to be painted on the relevant date and in the process, the deceased insisted the driver to take the vehicle for his personal work without any authority. As such the manner of accident had been alleged in some other way.

On the other hand, the insurer of the truck filed its written statement asserting therein that the driver was not having a valid driving licence and there was violation of policy condition and the route on which the accident was also not permissible. Quantum of compensation has been challenged.

The learned Tribunal framed necessary issues, recorded the evidence led by the rival parties, heard them and after perusing the material on record, the Tribunal came to the conclusion that it was established that the driver and owner of the vehicle had not taken reasonable care regarding the management of the truck. After discussing the entire evidence on record elaborately, it was concluded by the Tribunal that the doctrine of res-ipsa loquitur was applicable in the present case and it was held that the driver of the truck was responsible for the motor accident, which resulted in the death of the deceased Shabbir. It may be noted that the owner and driver of the vehicle utterly failed to substantiate their contention that the accident had taken place otherwise than what had been claimed by the claimants. On the point of quantum of compensation, the learned Tribunal after having dealt with the evidence led by the claimants assessed the monthly income of the deceased at Rs. 1500/-. The learned Tribunal assessed the expectancy of life of the deceased at 65 years, had he not died in the accident. The deceased was 30 years of age at the time of his death, therefore, the loss of income was computed 1500 x 12 x 35, which came to Rs. 6,30,000/-. The personal expenses of the deceased were assessed to be 1/3rd and the loss of dependency was assessed Rs. 6,30,000/- (-) 2,10,000/- = Rs. 4,20,000/-. The learned Tribunal further deducted 20% therefrom towards uncertainties of life and thereby worked out the loss at Rs. 3,36,000/-. Looking to the facts and circumstances of the case, the learned Tribunal reduced the amount of compensation from Rs. 3,36,000/- to Rs. 1,50,000/-. The learned Tribunal has concluded that the Insurance Company could not bring on record that there was either violation of policy condition or that the driver had no valid licence. The liability of the insurer towards third party risk was found to be Rs. 1,50,000/-, Therefore, the insurer was directed to pay this amount and the rest of the amount was made payable by the owner and driver of the vehicle which included award of 12% interest and costs of the proceedings.

In this appeal, the owner of the vehicle has challenged the finding of the Tribunal on the point of negligence. It may be mentioned here that the owner and driver of the vehicle had taken another story leading to the motor accident in question, therefore, the burden of proving the negligence shifted on them and it was imperative upon the owner/driver to have established by cogent and reliable evidence that there was no negligence on the part of the driver. Moreover, it may be seen that there is plethora of evidence which goes to prove that the driver of the offending truck was negligence. In this regard, a reference to the testimony P.W.2, who was working as a labourer and he was a witness of factum of negligence on the part of the driver. This witness had given ocular account of the accident. In his evidence he had stated in so many words the manner in which the accident took place due to rashness and negligence on the part of the driver. He is an independent and reliable witness. Since this witness had not been cross-examined at all on behalf of the owner and driver of the vehicle, therefore, his testimony remained unchallenged on the point of factum of negligence. Moreover, there is testimony of Gopal Bahadur, the conductor of the truck in question. He had narrated the entire story leading to the accident in question. The learned Tribunal had dealt with the testimony of this witness in detail. The learned Tribunal has also observed that ***"in this case, accident is admitted. The defence set up in the written statement of the driver and the owner is not proved and nor any evidence on their behalf has been led in the case. the case of the claimants that the deceased was carrying stones in the truck in question to the place of his site where his work of contract was going on seems correct."***

It is thus fully proved that the accident in question was the sole negligence on the part of the truck driver. Even from a remote consideration, we are unable to take a different view from that of the learned Tribunal. It is worth mention that the learned Tribunal had already considered each and every minute detail and

that of the learned Tribunal. It is worth mention that the learned Tribunal had already considered each and every minute detail and had given a detailed finding at page nos. 5 to 9 of the impugned judgment and award. We therefore hold that the accident in question occurred due to rashness and negligence on the part of the driver of the offending truck.

The appellant has taken a lame stand to challenge the finding on the point of quantum of compensation. We have already narrated the entire details of the income and the reasoning given by the learned Tribunal. Moreover, the income of the deceased was fully established to be not less than 1500/- per month. There is no dispute about the age of the deceased, who was about 30 years of age at the time of his death. The learned Tribunal has considered all the contentions raised before it while computing the compensation. We have detailed above that despite the assessment of compensation at Rs. 3,36,000/-, the learned Tribunal has only awarded sum of Rs. 1,50,000/-, which is quite moderate. Since the claimants have not filed any cross-objection, we are not inclined to touch this point.

Learned counsel for the appellant submitted that the learned Tribunal has assessed compensation of Rs. 1,50,000/- and has fastened the liability to pay the compensation on insurance company and that of interest thereon upon the owner-appellant and the driver of the truck, therefore, the impugned order suffers from illegality and is arbitrary. Moreover the compensation amount was payable by the insurance company from the date of application. It was delayed due to the fault of insurance company, hence the interest should also be paid by the insurer. Therefore, the order of the Tribunal is against the provisions of the said Act.

Learned counsel for the appellant lastly submitted that sum of Rs. 15,000/- has already been paid to be claimants under the provisions of Section 92-A of the Act as interim compensation,

but the learned Tribunal has erred in not adjusting the said amount under Section 92(B)(3)(9) of the Motor Vehicles Act 1939.

We find force in the above contentions. So far as the award of interest under Section 110CC under the Old Act and under Section 171 of the 1988 Act is a discretion of the court for delay in paying the compensation and to ensure payment to the claimants at the earliest. When the learned Tribunal had fastened the liability on the insurer, i.e. respondent no. 9, in the event the interest has to be paid by the Insurance Company. The owner and driver would not be liable to pay interest and the amount paid under Section 92-A of the Act is also adjustable under the aforesaid provision of the Act.

Accordingly, the appeal deserves to be partly allowed and the impugned order is liable to be modified to the above extent.

The appeal is partly allowed. The judgment and award, under appeal, is modified to the extent that the insurance company along shall be liable to pay the compensation along with interest as awarded by the Tribunal. The amount of interim compensation, i.e. Rs. 15,000/- already paid to the claimants shall be adjusted towards payment of compensation. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

RCP

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Hon'ble B.S. Verma, J.

The appeal is partly allowed. For order see out order of date passed on separate sheet.

(B.S. Verma, J.) (P.C. Verma, J.)
07-07-2006.